In the High Court of Judicature at Madras

?Dated: 18/11/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.O.P.No.35372 of 2004

Rajiv Sharma Petitioner

-vs-

M/s India Textile Company,
rep. by its Partner,
Mr.K.K.Thangavel
Vattakinan,
Kambuliampatti,
Vijayamargalam,
Perundui Taluk,
Erode Respondent

Prayer: Petition filed under Section 482 of Cr.P.C for the relief stated therein.

^For petitioner : Mr.R.Kumarasamy

!For respondents : Mr.V.Arul
Govt.Advocate (Crl.Side)

:O R D E R

The petitioner filed the above criminal original petition praying to direct the learned District Munsif-cum-Judicial Magistrate, Perundui to furnish the copy of the Judgment dated 1.11.2004 made in C.C.No.305 of 2003 on the file of the District Munsif cum Judicial Magistrate, Perundurai to the petitioner enabling him to prefer an appeal.

2. Heard both.

3. In consideration of the facts pleaded, upon perusing the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that it is a case in which the complaint lodged on the part of the petitioner was taken on file by the trial Court as private complaint registering the case under Section 138 of Negotiable Instruments Act in which the cheque amount is Rs.4,58,452 /-; that on the date of the judgment, the petitioner without appearing himself before the Court, through his counsel has filed applications under Section 317 and 309 Cr.PC seeking the relief stated therein and it was the day that the lower Court has fixed for the delivery of the judgment as a result of which the lower Court has rightly

rejected the applications filed by the petitioner and delivered the judgment in which the petitioner got convicted and sentenced to undergo RI for one year further imposing a fine of Rs.5000/-.

4. It is relevant to point out that the petitioner since being absent on the date of delivery of the judgment, the Court was not able to do anything excepting to pass the Non Bailable Warrant against the petitioner/accused and during the pendency of the Non Bailable Warrant which is still in force, the petitioner has filed the copy application for the delivery of the judgment copy and the petitioner being an absconding convict against whom the Non Bailable Warrant is pending, the learned Magistrate remarking "At the date of judgment the accused is absent. NBW issued against him. Hence, the C.A. Is returned."
has passed the above order, thus returning the copy application indirectly thereby insisting the petitioner/accused to comply with the requirements of law in relation to the Non Bailable Warrant pending against him.

5. Learned counsel appearing on behalf of the petitioner citing Section 353(6) Cr.PC would argue to the effect that according to this Section, the appearance of the accused for the delivery of the judgment is a must and without the appearance of the accused, the judgment has been delivered in this case and therefore, the manner in which the judgment was delivered by the lower Court is not correct.

6. It must be borne in mind that this Court is now dealing with the above criminal original petition wherein the prayer of the petitioner is with regard to the issuance of the copy of the judgment dated 0 1.11.2004 made in C.C.No.305 of 2003 on the file of the Court of Judicial Magistrate, Perundhurai and it is not an application testifying the validity of the judgment delivered by the lower Court.

7. Secondly, the only point for consideration is whether the absence of the petitioner on the date of judgment was on justifiable reasons for which absolutely no materials have been placed before this Court, but what comes to be known is that the petitioner without appearing before the Court has filed petitions for recalling the witnesses etc., on the date of judgment, that is, after the trial was over. Under these circumstances, the learned Magistrate was left with no choice but to dismiss those petitions and since

the business of the day was only for delivery of judgment, has rightly delivered the judgment in the absence of the petitioner and also has issued Non-Bailable Warrant against the petitioner and during the pendency of the Non-bailable warrant, the petitioner has filed a copy application seeking to deliver the judgment pronounced and hecne insisting the appearance of the petitioner against whom Non-bailable Warrant is pending, the learned Magistrate has rejected the application and the act of the lower Court is quite justifiable and the accused being an absconding convict against whom the Non-bailable Warrant is pending, is not at all entitled to get any order or to question the validity of the act done by the lower Court and his first duty is to surrender before the Court in pursuance of the Non-bailable Warrant issued, and only then the question of other proceedings will arise and therefore, for

all the reasons assigned, this Court is not able to see any inconsistency or legal infirmity or irregularity or error committed on the part of the learned trial Judge in returning the copy application filed on the part of the petitioner and hence the following Order:-

In result,

(i) the above criminal original petition does not merit acceptance but only become liable to be dismissed and the same is dismissed accordingly.

Index :Yes

Internet :Yes

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To

1. The District Munsif-cum-Judicial Magistrate,
Perundui.

2) The Public Prosecutor, High Court, Madras.104